IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 861 of 2007

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE STATE OF GUJARAT - Applicant(s)
Versus
NAREBDRASINH.H.RAJ - Respondent(s)

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Appearance :
MR RC KODEKAR, ADDL. UBLIC PROSECUTOR for Applicant(s) : 1,
DS AFF.NOT FILED (R) for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 03/08/2007

ORAL JUDGMENT

1. By way of this petition under Articles 226 and 227 of the Constitution of India, the petitioner – State of Gujarat has prayed for an appropriate order quashing and setting aside the impugned

order dated 28.3.2007 passed by the learned Additional Sessions Judge, Vadodara passed in Criminal Revision Application No. 67 of 2007.

2. At the outset, it is to be noted that this Court issued Rule in the present proceedings on 2.7.2007 making it returnable on 16th July, 2007. Thereafter, again this Court passed an order on 16.7.2007 to issue fresh Notice of Rule upon the respondent making it returnable on 26th July, 2007 and Direct Service was permitted. On 26.7.2007 one Shri A.B.Acharya, learned advocate submitted that he has instructions to appear on behalf of the respondent and he prayed for time and accordingly, this matter was adjourned to 30th July, 2007. On 30.7.2007, Shri A.B.Acharya, learned advocate submitted that he has not received Vakalatnama on behalf of the respondent and he again prayed for time and accordingly, this petition was adjourned to today. Today, neither Shri A.B.Acharya, learned advocate has filed Vakalatnama / has appeared nor any other arrangement is made for the respondent and thus,

though served, nobody appears on behalf of the respondent. Under the circumstances, this Court has no other alternative but to proceed further with the present petition ex-parte.

3. A criminal complaint is filed against the respondent in the Court of learned JMFC, Karjan being M Case No. 15 of 2006 for the offence punishable under sections 409, 420, 426, 506(2), 120(B) and 114 of the IPC and the learned trial Court passed an order for inquiry under section 156(3) of the Criminal Procedure Code and directed the Police Officer of Karjan Police Station to hold the inquiry under section 156(3) of the Criminal Procedure Code. During the course of the investigation, the Investigating Officer submitted an application before the learned JMFC, Karjan for granting police remand of the respondent and the learned JMFC, Karjan by order dated 19th March, 2007 passed an order of granting 15 days remand of the respondent upto 2.4.2007. Being aggrieved and dissatisfied with the order passed by the learned JMFC,

Karjan dated 19.3.2007 in handing over the custody of the respondent – original accused to the police and allowing the application for remand, the respondent herein preferred Criminal Revision Application being Criminal Revision Application No. 67 of 2007 before the learned Sessions Court, Vadodara which came to be heard, decided and disposed of by the learned Additional Sessions Judge, Fast Track Court No.5, Vadodara, who by his order 28.3.2007 partly allowed the said Criminal Revision Application and granted police custody of the respondent only upto 29.3.2007 i.e. the remand of the respondent only for a period of one day. Being aggrieved with the judgment and order passed by the learned Additional Sessions Judge, Fast Track Court No.5, Vadodara dated 28.3.2007 passed in Criminal Revision Application No. 67 of 2007, the petitioner – State of Gujarat has preferred present petition under Articles 226 and 227 of the Constitution of India.

4. Shri R.C.Kodekar, learned APP relying upon the

decision of the Hon'ble Supreme Court in case of ***State Represented By Inspector of Police & Others V/s. N.M.T. Joy Immaculate*** reported in **2004 (5) SCC 729** has submitted that the learned Additional Sessions Judge has materially erred in entertaining the Criminal Revision Application against the order granting police remand. He has submitted that as held by the Hon'ble Supreme Court in the aforesaid decision, against the order of grant of remand, the revision application under section 397 of the Criminal Procedure Code is not maintainable as the same is an interlocutory order. Therefore, it is requested to allow the present petition and to quash and set aside the order passed by the learned Revisional Court.

5. This Court has considered the decision of the Hon'ble Supreme Court rendered in case of ***N.M.T. Joy Immaculate*** (supra) wherein, it is held by the Hon'ble Supreme Court that the order of granting of the remand of the accused is an interlocutory order and therefore, the revision

application under section 397 of the Criminal Procedure Code is not maintainable. Under the circumstances, when the Criminal Revision Application was filed before the learned Additional Sessions Judge against the order passed by the learned JMFC, Karjan granting remand of the accused for the period of 15 days, the Criminal Revision Application before the learned Additional Sessions Judge was not maintainable as it was against the interlocutory order as held by the Hon'ble Supreme Court in the aforesaid decision. Under the circumstances, the Criminal Revision Application itself is not maintainable under section 397 of the Criminal Procedure Code, the impugned order passed by the learned Revisional Court interfering with the order passed by the learned JMFC, Karjan granting remand of the accused requires to be quashed and set aside.

6. For the reasons stated above, petition succeeds. The judgment and order passed by the learned Additional Sessions Judge, Fast Track Court

No.5, Vadodara dated 28.3.2007 passed in Criminal Revision Application No. 67 of 2007 is hereby quashed and set aside. Rule is made absolute to the aforesaid extent.

[M.R.Shah, J.]

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